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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,208	08/27/2001	Richard M. Winchester		5639

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/940,208

Applicant(s)

R. WINCHESTER

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003 and 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Objections***

Claim 14 is objected to because the claim refers to the method of claim 12, but claim 12 does not set forth a method. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "thereon on a single fixed spacing interval" on line 4 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How can all of the repeating units have the same spacing interval if the construction layout stripping is to be used with various sized construction members having various spacing therebetween? In other words, the partition 18 is spaced closer to the partition 34 than to the partition 20, therefore, the pair of uprights are not spaced apart at a single fixed spacing interval. Recitations such as "a single fixed interval" on line 7 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the single fixed spacing interval set forth above or is attempting to set forth another interval in addition to the one set forth above. Recitations such as "the spacing" on line 7 of claim 1 render the claims indefinite because it is unclear what element(s) of the invention include the spacing the applicant is referring to. Recitations such as "the construction element" on line 8 of claim 1 render the claims indefinite because it is unclear which one of the plurality of construction elements set forth above the applicant

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is referring to. Recitations such as "type" on line 3 of claim 2 render the claims indefinite because they are relative terms whose meaning is not defined in the specification and cannot be determined by one with ordinary skill in the art. How much like a bladed cutting device must a cutting device be before it can be characterized as a bladed type of cutting device. Recitations such as "the center of the first partition" on line 4 of claim 8 render the claims indefinite because they lack antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Salato. Salato discloses a construction layout stripping comprising a pliable, non-elastic elongated base 20, repeating units (not numbered, but comprising the spacing between any two pair of uprights 30) disposed on the base, the repeating units having a plurality of pairs of uprights 30 thereon on a single fixed spacing interval, each pair of uprights adapted to define a partition for grippingly receiving a specified size of construction member 15, each pair of uprights 30 define a partition and any one partition can be spaced away from another partition by a distance equal to (x)(the partition length) so that more than one spacing interval can be used with the same stripping.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salato as applied to claims 1 and 6 above, and further in view of Hanson. Hanson discloses a construction stripping 16 comprising ribs 22.

It would have been obvious to one of ordinary skill in the art to provide Salato with cutting ribs, as taught by Hanson, to increase the strength of the strip against bending along the transverse axis thereof.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salato as applied to claims 1 and 6 above, and further in view of Silver et al. Silver et al. discloses the use of removable pressure sensitive adhesive layer used to position construction elements before fixing the construction elements in place.

It would have been obvious to one of ordinary skill in the art to provide Salato with an adhesive layer, as taught by Silver et al., to securely hold the layout stripping in place while construction elements are placed with respect to the layout stripping.

Claim 7-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salato as applied to claims 1 and 6 above, and further in view of Grzyb. Grzyb

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discloses a construction layout stripping comprising a tape 11 having repeating units each having a center 12, 14, 54, etc. wherein a second unit (not numbered, but shown at the 16" mark on the tape) is 16" from the first unit (not numbered, but shown at the 0 mark on the tape), a third unit 53 is 8" from the second unit, and a fourth unit (not numbered, but shown at the 32" mark on the tape) is 8" from the third unit, the fourth unit is 16" from a center of the first unit (not numbered, but seen at the 48" mark on the tape) of the next repeating unit, each set of units has a different identifier means (not numbered, but see lines 44-51 of column 2), and the construction layout stripping is provided on a roll 10.

It would have been obvious to one of ordinary skill in the art to provide Salato with a spacing, identifier means and a roll, as taught by Grzyb, to more easily set a spacing for the framing members disposed on the construction layout stripping and to more easily transport the stripping.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salato as applied to claims 1 and 6 above. The use of the apparatus of Salato would inherently lead to the method steps of claim 13.

### ***Response to Arguments***

Applicant's arguments filed November 21, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Salato, the examiner respectfully disagrees. Salato discloses a pair of uprights on either side of construction member 15. The next pair of uprights is spaced the distance (x, i.e., the distance between the uprights) away from the first pair of uprights. Therefore, each construction member does not have to share the same upright with another construction member. The applicant's comments concerning claim 6 are not persuasive because the limitations of 16 and 24 inches are not recited in claim 6.

### ***Conclusion***

**THIS ACTION IS NOT MADE FINAL.**

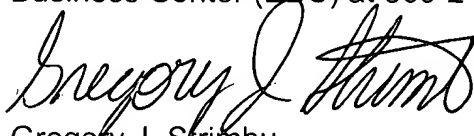
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal line extending from the end of the signature.

Gregory J. Strimbu

Primary Examiner

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July 22, 2004